CHINOOK RESOURCES, INC.

IBLA 84-746 January 30, 1985

Appeal from that part of the June 6, 1984, decision of the Wyoming State Office, Bureau of Land Management, affirming an assessment of $5,250 against Chinook Resources, Inc., for its failure to comply timely with an incident of noncompliance order.

Reversed.

1. Bureau of Land Management -- Oil and Gas Leases: Civil Assessments and Penalties

When the Bureau of Land Management cites an oil and gas lessee for an incident of noncompliance for a safety violation, the failure to have a belt guard on a pumpjack, the Bureau of Land Management may not assess the lessee a penalty for noncompliance if the lessee, acting in good faith, has complied timely with the terms of the order and if the purpose of the order, ensuring safety, has been fulfilled. No penalty will be imposed where the cited "hazard" is so minimal that the risk of actual harm is virtually non-existent.

APPEARANCES: Robert O. Banks, Jr., general counsel, Chinook Resources, Inc.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

Chinook Resources, Inc. (Chinook), appeals that part of the June 6, 1984, decision of the Wyoming State Office (State Office), Bureau of Land Management (BLM), affirming an incident of noncompliance (INC) citation against Chinook and the resulting assessment of $5,250 liquidated damages. The Casper District Office (District Office) of BLM cited Chinook with the INC for a safety violation, the failure to have a belt guard on the pumpjack at an oil and gas well site.

On March 21, 1984, an official from the District Office inspected two of Chinook's well sites, the Keith Federal #43-27 (W-33781) and the Blake Federal #43-28 (W-56933-B), located in Converse County, Wyoming. As a result of that inspection, Chinook was cited with several INC's, one of

which, the failure to have a belt guard covering the sheave and belt on the Blake Federal #43-28, is the subject of this appeal. 1/

The District Office gave Chinook until March 29, 1984, 2/ to comply with the subject INC. On March 28, Chinook installed a belt guard on Blake Federal #43-28. On March 28 and April 18, the District Office inspected the site. By letter of April 18, the District Office notified Chinook that the belt guard was "ineffective." In that letter, Chinook was advised that it was to be assessed $250 per day for noncompliance, beginning March 30, and ending when compliance was obtained. Chinook modified the size of the belt guard on April 20. Therefore, the assessment of $250 per day began March 30 and continued through April 19, 1984, aggregating $5,250.

On April 24, Chinook appealed each INC citation to the State Office, which made a procedural and technical review of the INC's. With regard to the belt guard, Chinook in its April 24 appeal stated: "The reason the belt guard was ineffective was because it was designed to cover a 54" sheave, which had been on order since March 5, 1984. This sheave arrived on April 19, 1984, and was installed on the 20th." In addition, Chinook stated that the failure to comply was "neither willful nor ongoing," that "every effort was made to comply," and that the "corrective action was completed in as timely a manner as could reasonably be expected under the circumstances." Finally, Chinook argued that "at no time was there any serious threat to health, safety, property or the environment."

1/ In the Mar. 21 notice of INC's detected, BLM cited 43 CFR 3162.7-4, Site Security on Federal and Indian (except Osage) Oil and Gas Leases. This regulation, however, has no applicability to the deficiency which is the subject of this appeal.

While BLM did not cite a safety regulation which specifically requires a belt guard for oil and gas pumpjacks, included in the record is a copy of 29 CFR 1910.219, which is an Occupational Safety and Health Administration regulation governing mechanical power-transmission apparatus and establishing requirements for belt guards.

2/ The time limit allowed for correction of the subject INC is unclear. The somewhat illegible copy of the March 21 notice of INC's detected for the W-56933-B appears to state that noncompliance must be corrected within 24 hours. However, in the April 18 notice of assessment for failure to timely correct the INC's, the District Office states that corrective work should have been completed March 29. The District Manager, Casper, in its May 11 Statement of Facts Report for Chinook Resources, Inc., states that the noted deficiencies on the W-56933-B should have been corrected by March 24. It appears the State Office, which assessed penalties beginning March 30, concluded that Chinook had until March 29 to correct the subject INC. Finally, appellant contends that it had until March 29 to correct the deficiencies (Statement of Reasons at 2). We shall assume that the more liberal time limit for correcting the deficiency, March 29, 1984, is applicable. Our problem in this regard is at least partly attributable to the fact that BLM furnished this Board with machine copies of the administrative record in violation of I.M. 82-584, which required the submission of the complete, original record.

The State Office, in its June 6, 1984, decision, dismissed each INC on procedural grounds, except the subject INC. In that decision, the State Office stated in relevant part:

> As evidenced by photographs, the inspector took at the well on April 18, the belt guard was ineffective. The guard did not effectively cover the spokes of the wheel or completely cover the belt. The belt guard was thereby unsafe. A belt guard of the proper size should have already been available at the site in any case. The operator did not request an extension on the time frame specified for correction. Therefore, the operator was in continued noncompliance until a proper belt guard was installed.

* * * * *

After careful consideration of the documented facts in this case, we conclude that the Casper District Office made a correct decision and action in the case of the belt guard * * * Chinook Resources should be assessed for noncompliance for the ineffective belt guard (a moderate safety violation) starting March 30 and ending midnight April 19 at $250 per day under 43 CFR 3163.3(a).

In its August 7, 1984, statement of reasons for appeal, Chinook argues that it has made a diligent effort to comply with the BLM order (Statement of Reasons at 6). Chinook states that the BLM decision was arbitrary, capricious, and an abuse of discretion (Statement of Reasons at 6). The thrust of Chinook's appeal is that there is no factual basis for BLM's conclusion that the belt guard was ineffective and unsafe (Statement of Reasons at 4). The possibility of injury from the 5-inch exposure of the belt and sheave is "nil" according to Chinook (Statement of Reasons at 4). Chinook contends that: "A person approaching the pumping unit would have to lean over 4 foot of fence and reach another 5 feet, 6 inches to come into contact with the exposed area. In other words, a total body extension of 9 feet, 6 inches from tip toes to fingertips would be required to reach the exposed area" (Statement of Reasons at 5). Furthermore, Chinook states that there is no danger of anyone coming into contact with the belt from inside the sheeptight fence while the pumping unit is operating (Statement of Reasons at 5). This is because

> [w]hen the pumping unit is running, the counterweights rotate toward the engine house on the outside of the sheave assembly, belt and belt guard. The motion of the sheave and belt cause the crankarms and counterweights to rotate, and if the counterweights are not turning the sheave and belt are idle. At the time of the supposed safety violation from the ineffective belt guard, the counterweights were making a full rotation every 13-1/3 seconds (4.5 revolutions per minute). No one could enter the sheep-tight fence, or for that matter lean over it to touch the belt or sheave, while the pumping unit was running because of the motion of the counterweights. Again, if the counterweights are not rotating, neither are the belt and sheave.

(Statement of Reasons at 5).

This case presents two closely related issues. First, has the State Office properly concluded that Chinook's belt guard was "ineffective" and "unsafe," so that Chinook was in "continued noncompliance until a proper belt guard was installed"? Second, was the noncompliance assessment of $250 per day for the period of March 30 through and including April 19, 1984, proper?

Federal regulations require that oil and gas operations must be safely conducted. Pursuant to 43 CFR 3162.5-3, the regulation governing onshore oil and gas operations and safety precautions,

> [t]he lessee shall perform operations and maintain equipment in a safe and workmanlike manner. The lessee shall take all precautions necessary to provide adequate protection for the health and safety of life and the protection of property. Compliance with health and safety requirements prescribed by the authorized officer shall not relieve the lessee of the responsibility for compliance with other pertinent health and safety requirements under applicable laws or regulations.

Although BLM is empowered to review oil and gas operations for safety and environmental violations, in the instant case we find that its conclusion that the belt guard installed on March 28 was "unsafe" and "ineffective," is not tenable. Harm from the moving belt was improbable because access to the belt was restricted by the fence and the rotating counterweights. In fact, given these access restrictions, the possibility of harm, even with no guard, was extremely remote. Moreover, merely 5 inches of the sheave and the belt were exposed by the guard (Statement of Reasons at 3). Hence, when the access restrictions and the substantial protection of this belt guard are considered together, there was virtually no possibility of injury. We conclude, therefore, that no significant hazard existed. However, our holding here is sui generis, based solely on the facts peculiar to this case, and may not be used as authority to justify operating oil and gas well pumpjacks without such belt guards in violation of applicable valid safety regulations or BLM orders.

The second issue is whether the noncompliance assessment of $5,250 against Chinook was proper. The regulation on noncompliance assessments, 43 CFR 3163.3, provides:

> Certain instances of noncompliance result in loss or damage to the lessor, the amount of which is difficult or impracticable to ascertain. Except where actual losses or damages can be ascertained in an amount larger than that set forth below, the following amounts shall be deemed to cover loss or damage to the lessor from specific instances of noncompliance. * * * [T]he specified loss or damage shall be applicable to each successive day of the noncompliance * * *. For failure to comply with a written order or instructions of the authorized officer, $250 if compliance is not obtained within the time specified. [Emphasis added.]

We find that appellant complied with the written order within the time prescribed. First, the terms of this order, while not vague, are nonspecific. The order merely states, "Warning is hereby given to correct the following deficiencies: * * * (5) No belt guard at pumpjack." Chinook installed a belt

guard on March 28, thereby timely correcting the stated deficiency. Furthermore, there is no evidence that appellant intended to contravene the spirit of this order. Rather, appellant's actions were in good faith and in furtherance of the purpose of this order -- to ensure safety at the well site. Appellant acted promptly, installing the belt guard within the grace period allowed by the INC (Statement of Reasons at 2). Furthermore, appellant acted quickly and on April 20 modified the belt guard to completely cover the belt and a larger sheave which had been on order since March 5, but which did not arrive until April 19 (Chinook appeal of April 24).

Finally, we are mindful that the primary purpose of this INC order was ensuring safety and that BLM may properly enforce valid safety standards. However, in this particular instance, due to access restrictions created by the fence and the rotating counterweights, this belt posed no real safety hazard during the assessment period. Consequently, the assessment levied against Chinook was inappropriate.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is reversed.

Edward W. Stuebing
Administrative Judge

I concur:

Gail M. Frazier
Administrative Judge.

ADMINISTRATIVE JUDGE IRWIN CONCURRING IN PART AND DISSENTING IN PART:

Although I agree that the record in this case is difficult to follow, it does indicate that on March 23, 1984, Chinook Resources, Inc. (Chinook), received notice that it had "no belt guard at [the] pumpjack" on the Blake Federal lease and that it had 24 hours from receipt of that notice to correct that and other "incidents of noncompliance." It did not install a belt guard until March 28, so it may properly be assessed $750 for its noncompliance on March 25, 26, and 27. See 43 CFR 3163.3(a).

A larger assessment cannot be sustained, however, because the record does not indicate that the Bureau of Land Management (BLM) gave Chinook adequate notice of what must be done to comply. It is not clear whether the reference to 43 CFR 3162.7-4 on the March 21 notice applies to the pumpjack incident or to one of the other four listed, but it is clear that nothing in that regulation tells Chinook what it must do to remedy the belt guard violation. On April 18 BLM wrote that the belt guard was "ineffective," but did not specify what would be deemed effective. Not until the June 6 decision did BLM state the guard "did not effectively cover the spokes of the wheel or completely cover the belt." Presumably BLM had in mind the requirements set forth in 29 CFR 1910.219(e)(3) that vertical and inclined belts "shall be enclosed by a guard" and "shall be arranged in such a manner that a minimum clearance of seven (7) feet is maintained between belt and floor and any point outside of guard." But unless and until BLM communicates what it has in mind to the lessee in writing, it cannot fairly assess it for not complying.

Will A. Irwin
Administrative Judge